

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JENNY L. SMYTH
1880 Harbor Island Drive, Suite A
San Diego, CA 92101

Registered Nurse License No. 574688

Respondent

Case No. 2012-507

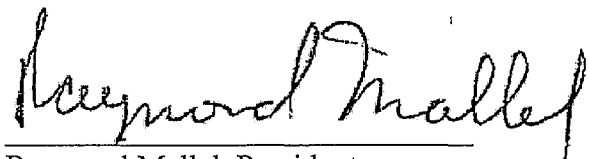
OAH No. 2012031049

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **March 4, 2013.**

IT IS SO ORDERED **February 2, 2013.**

A handwritten signature in black ink, reading "Raymond Mallel". The signature is written in a cursive style with a horizontal line underneath it.

Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012 507

12 **JENNY L. SMYTH**
13 **1880 Harbor Island Drive, Suite A**
14 **San Diego, CA 92101-1061**

OAH No. 2012031049

15 **Registered Nurse License No. 574688**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
22 Registered Nursing. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Nicole R. Trama,
24 Deputy Attorney General.

25 2. Respondent Jenny L. Smyth (Respondent) is represented in this proceeding by
26 attorney David M. Balfour, Esq., whose address is: 2780 Gateway Road, Carlsbad, CA 92009

27 3. On or about December 4, 2000, the Board of Registered Nursing issued Registered
28 Nurse License No. 574688 to Jenny L. Smyth (Respondent). The Registered Nurse License was

1 in full force and effect at all times relevant to the charges brought in Accusation No. 2012 507
2 and will expire on March 31, 2014, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 2012 507 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on February 24,
7 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012 507 is attached as exhibit A and incorporated herein
9 by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012 507. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 2012 507.

26 10. Respondent agrees that her Registered Nurse License is subject to discipline and she
27 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.
28

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 574688 issued to Respondent Jenny L. Smyth (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1 **Severability Clause.** Each condition of probation contained herein is a separate and
2 distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
7 detailed account of any and all violations of law shall be reported by Respondent to the Board in
8 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
9 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
10 45 days of the effective date of the decision, unless previously submitted as part of the licensure
11 application process.

12 **Criminal Court Orders:** If Respondent is under criminal court orders, including
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
16 the conditions of the Probation Program established by the Board and cooperate with
17 representatives of the Board in its monitoring and investigation of the Respondent's compliance
18 with the Board's Probation Program. Respondent shall inform the Board in writing within no
19 more than 15 days of any address change and shall at all times maintain an active, current license
20 status with the Board, including during any period of suspension.

21 Upon successful completion of probation, Respondent's license shall be fully restored.

22 3. **Report in Person.** Respondent, during the period of probation, shall appear in
23 person at interviews/meetings as directed by the Board or its designated representatives.

24 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
25 practice as a registered nurse outside of California shall not apply toward a reduction of this
26 probation time period. Respondent's probation is tolled, if and when she resides outside of
27 California. Respondent must provide written notice to the Board within 15 days of any change of
28 residency or practice outside the state, and within 30 days prior to re-establishing residency or

1 returning to practice in this state.

2 Respondent shall provide a list of all states and territories where she has ever been licensed
3 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
4 information regarding the status of each license and any changes in such license status during the
5 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
6 license during the term of probation.

7 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
8 or cause to be submitted such written reports/declarations and verification of actions under
9 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
10 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
11 Respondent shall immediately execute all release of information forms as may be required by the
12 Board or its representatives.

13 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
14 state and territory in which she has a registered nurse license.

15 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
16 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
17 6 consecutive months or as determined by the Board.

18 For purposes of compliance with the section, "engage in the practice of registered nursing"
19 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
20 non-direct patient care position that requires licensure as a registered nurse.

21 The Board may require that advanced practice nurses engage in advanced practice nursing
22 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

23 If Respondent has not complied with this condition during the probationary term, and
24 Respondent has presented sufficient documentation of her good faith efforts to comply with this
25 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
26 extension of Respondent's probation period up to one year without further hearing in order to
27 comply with this condition. During the one year extension, all original conditions of probation
28 shall apply.

1 7. **Employment Approval and Reporting Requirements.** Respondent shall obtain
2 prior approval from the Board before commencing or continuing any employment, paid or
3 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to her employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within seventy-two
9 (72) hours after she obtains any nursing or other health care related employment. Respondent
10 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
11 separated, regardless of cause, from any nursing, or other health care related employment with a
12 full explanation of the circumstances surrounding the termination or separation.

13 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding
14 Respondent's level of supervision and/or collaboration before commencing or continuing any
15 employment as a registered nurse, or education and training that includes patient care.

16 Respondent shall practice only under the direct supervision of a registered nurse in good
17 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
18 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
19 approved.

20 Respondent's level of supervision and/or collaboration may include, but is not limited to the
21 following:

22 (a) Maximum - The individual providing supervision and/or collaboration is present in
23 the patient care area or in any other work setting at all times.

24 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
25 care unit or in any other work setting at least half the hours Respondent works.

26 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
27 person communication with Respondent at least twice during each shift worked.

28 (d) Home Health Care - If Respondent is approved to work in the home health care

1 setting, the individual providing supervision and/or collaboration shall have person-to-person
2 communication with Respondent as required by the Board each work day. Respondent shall
3 maintain telephone or other telecommunication contact with the individual providing supervision
4 and/or collaboration as required by the Board during each work day. The individual providing
5 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
6 patients' homes visited by Respondent with or without Respondent present.

7 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
8 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
9 or for an in-house nursing pool.

10 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
11 registered nursing supervision and other protections for home visits have been approved by the
12 Board. Respondent shall not work in any other registered nursing occupation where home visits
13 are required.

14 Respondent shall not work in any health care setting as a supervisor of registered nurses.
15 The Board may additionally restrict Respondent from supervising licensed vocational nurses
16 and/or unlicensed assistive personnel on a case-by-case basis.

17 Respondent shall not work as a faculty member in an approved school of nursing or as an
18 instructor in a Board approved continuing education program.

19 Respondent shall work only on a regularly assigned, identified and predetermined
20 worksite(s) and shall not work in a float capacity.

21 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
22 request documentation to determine whether there should be restrictions on the hours of work.

23 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
24 successfully complete a course(s) relevant to the practice of registered nursing no later than six
25 months prior to the end of her probationary term.

26 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
27 Respondent shall submit to the Board the original transcripts or certificates of completion for the
28 above required course(s). The Board shall return the original documents to Respondent after

1 photocopying them for its records.

2 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
3 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
4 amount of \$1,875.00. Respondent shall be permitted to pay these costs in a payment plan
5 approved by the Board, with payments to be completed no later than three months prior to the end
6 of the probation term.

7 If Respondent has not complied with this condition during the probationary term, and
8 Respondent has presented sufficient documentation of her good faith efforts to comply with this
9 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
10 extension of Respondent's probation period up to one year without further hearing in order to
11 comply with this condition. During the one year extension, all original conditions of probation
12 will apply.

13 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
14 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
15 and impose the stayed discipline (revocation/suspension) of Respondent's license.

16 If during the period of probation, an accusation or petition to revoke probation has been
17 filed against Respondent's license or the Attorney General's Office has been requested to prepare
18 an accusation or petition to revoke probation against Respondent's license, the probationary
19 period shall automatically be extended and shall not expire until the accusation or petition has
20 been acted upon by the Board.

21 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
22 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
23 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
24 Respondent's request and to exercise its discretion whether to grant the request, or to take any
25 other action deemed appropriate and reasonable under the circumstances, without further hearing.
26 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
27 subject to the conditions of probation.

28 Surrender of Respondent's license shall be considered a disciplinary action and shall

1 become a part of Respondent's license history with the Board. A registered nurse whose license
2 has been surrendered may petition the Board for reinstatement no sooner than the following
3 minimum periods from the effective date of the disciplinary decision:

4 (1) Two years for reinstatement of a license that was surrendered for any reason other
5 than a mental or physical illness; or

6 (2) One year for a license surrendered for a mental or physical illness.

7 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
8 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
9 assistant, who is approved by the Board before the assessment is performed, submit an
10 assessment of the Respondent's physical condition and capability to perform the duties of a
11 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
12 medically determined, a recommended treatment program will be instituted and followed by the
13 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
14 to the Board on forms provided by the Board.

15 If Respondent is determined to be unable to practice safely as a registered nurse, the
16 licensed physician, nurse practitioner, or physician assistant making this determination shall
17 immediately notify the Board and Respondent by telephone, and the Board shall request that the
18 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
19 immediately cease practice and shall not resume practice until notified by the Board. During this
20 period of suspension, Respondent shall not engage in any practice for which a license issued by
21 the Board is required until the Board has notified Respondent that a medical determination
22 permits Respondent to resume practice. This period of suspension will not apply to the reduction
23 of this probationary time period.

24 If Respondent fails to have the above assessment submitted to the Board within the 45-day
25 requirement, Respondent shall immediately cease practice and shall not resume practice until
26 notified by the Board. This period of suspension will not apply to the reduction of this
27 probationary time period. The Board may waive or postpone this suspension only if significant,
28 documented evidence of mitigation is provided. Such evidence must establish good faith efforts

1 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
2 Only one such waiver or extension may be permitted.

3 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

4 Respondent, at her expense, shall successfully complete during the probationary period or shall
5 have successfully completed prior to commencement of probation a Board-approved
6 treatment/rehabilitation program of at least six months duration. As required, reports shall be
7 submitted by the program on forms provided by the Board. If Respondent has not completed a
8 Board-approved treatment/rehabilitation program prior to commencement of probation,
9 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
10 If a program is not successfully completed within the first nine months of probation, the Board
11 shall consider Respondent in violation of probation.

12 Based on Board recommendation, each week Respondent shall be required to attend at least
13 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
14 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
15 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
16 added. Respondent shall submit dated and signed documentation confirming such attendance to
17 the Board during the entire period of probation. Respondent shall continue with the recovery plan
18 recommended by the treatment/rehabilitation program or a licensed mental health examiner
19 and/or other ongoing recovery groups.

20 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
21 completely abstain from the possession, injection or consumption by any route of all controlled
22 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
23 are ordered by a health care professional legally authorized to do so as part of documented
24 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
25 days, by the prescribing health professional, a report identifying the medication, dosage, the date
26 the medication was prescribed, the Respondent's prognosis, the date the medication will no
27 longer be required, and the effect on the recovery plan, if appropriate.

28 Respondent shall identify for the Board a single physician, nurse practitioner or physician

1 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
2 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
3 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
4 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
5 considered addictive have been prescribed, the report shall identify a program for the time limited
6 use of any such substances.

7 The Board may require the single coordinating physician, nurse practitioner, or physician
8 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
9 medicine.

10 **17. Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
11 random, biological fluid testing or a drug screening program which the Board approves. The
12 length of time and frequency will be subject to approval by the Board. Respondent is responsible
13 for keeping the Board informed of Respondent's current telephone number at all times.
14 Respondent shall also ensure that messages may be left at the telephone number when she is not
15 available and ensure that reports are submitted directly by the testing agency to the Board, as
16 directed. Any confirmed positive finding shall be reported immediately to the Board by the
17 program and Respondent shall be considered in violation of probation.

18 In addition, Respondent, at any time during the period of probation, shall fully cooperate
19 with the Board or any of its representatives, and shall, when requested, submit to such tests and
20 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
21 hypnotics, dangerous drugs, or other controlled substances.

22 If Respondent has a positive drug screen for any substance not legally authorized and not
23 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
24 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
25 practice pending the final decision on the petition to revoke probation or the accusation. This
26 period of suspension will not apply to the reduction of this probationary time period.

27 If Respondent fails to participate in a random, biological fluid testing or drug screening
28 program within the specified time frame, Respondent shall immediately cease practice and shall

1 not resume practice until notified by the Board. After taking into account documented evidence
2 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
3 suspend Respondent from practice pending the final decision on the petition to revoke probation
4 or the accusation. This period of suspension will not apply to the reduction of this probationary
5 time period.

6 **18. Mental Health Examination.** Respondent shall, within 45 days of the effective date
7 of this Decision, have a mental health examination including psychological testing as appropriate
8 to determine her capability to perform the duties of a registered nurse. The examination will be
9 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
10 the Board. The examining mental health practitioner will submit a written report of that
11 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
12 Recommendations for treatment, therapy or counseling made as a result of the mental health
13 examination will be instituted and followed by Respondent.

14 If Respondent is determined to be unable to practice safely as a registered nurse, the
15 licensed mental health care practitioner making this determination shall immediately notify the
16 Board and Respondent by telephone, and the Board shall request that the Attorney General's
17 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
18 practice and may not resume practice until notified by the Board. During this period of
19 suspension, Respondent shall not engage in any practice for which a license issued by the Board
20 is required, until the Board has notified Respondent that a mental health determination permits
21 Respondent to resume practice. This period of suspension will not apply to the reduction of this
22 probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within the 45-day
24 requirement, Respondent shall immediately cease practice and shall not resume practice until
25 notified by the Board. This period of suspension will not apply to the reduction of this
26 probationary time period. The Board may waive or postpone this suspension only if significant,
27 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
28 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

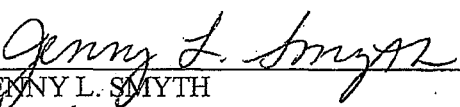
1 Only one such waiver or extension may be permitted.

2 19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in
3 an on-going counseling program until such time as the Board releases her from this requirement
4 and only upon the recommendation of the counselor. Written progress reports from the counselor
5 will be required at various intervals.

6 **ACCEPTANCE**

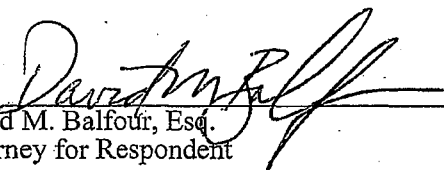
7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, David M. Balfour, Esq. I understand the stipulation and the effect
9 it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
10 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
11 Decision and Order of the Board of Registered Nursing.

12
13 DATED: 10/22/12


14 JENNY L. SMYTH
Respondent

15 I have read and fully discussed with Respondent Jenny L. Smyth the terms and conditions
16 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
17 its form and content.

18 DATED: 10/22/12


19 David M. Balfour, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 10/23/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Nicole R. Trama

NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

SD2012802113
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Exhibit A

Accusation No. 2012 507

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

13 **JENNY L. SMYTH**
2324 Manchester Ave.
14 Cardiff, CA 92007

15 **Registered Nurse License No. 574688**

16 Respondent.

Case No. 2012-507
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about December 4, 2000, the Board of Registered Nursing issued Registered
24 Nurse License Number 574688 to Jenny L. Smyth (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 March 31, 2014, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration

STATUTORY PROVISIONS

7. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse
3 or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct . . .

5 9. Section 2762 of the Code states:

6 In addition to other acts constituting unprofessional conduct within the
7 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
8 a person licensed under this chapter to do any of the following:

9 (a) Obtain or possess in violation of law, or prescribe, or except as directed
10 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
11 herself, or furnish or administer to another, any controlled substance as defined in
12 Division 10 (commencing with Section 11000) of the Health and Safety Code or
13 any dangerous drug or dangerous device as defined in Section 4022.

14 (b) Use any controlled substance as defined in Division 10 (commencing
15 with Section 11000) of the Health and Safety Code, or any dangerous drug or
16 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
17 or in a manner dangerous or injurious to himself or herself, any other person, or
18 the public or to the extent that such use impairs his or her ability to conduct with
19 safety to the public the practice authorized by his or her license.

20

21 10. Section 4022 of the Code states

22 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
23 self-use in humans or animals, and includes the following:

24 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
25 without prescription," "Rx only," or words of similar import.

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar
28 import, the blank to be filled in with the designation of the practitioner licensed to use
29 or order use of the device.

30 (c) Any other drug or device that by federal or state law can be lawfully
31 dispensed only on prescription or furnished pursuant to Section 4006.

32 11. Section 4060 of the Code states, in pertinent part, that no person shall possess any
33 controlled substance, except that furnished to a person upon the prescription of a physician,
34 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

1 12. Health and Safety Code section 11350(a) states:

2 Except as otherwise provided in this division, every person who possesses
3 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
9 to practice in this state, shall be punished by imprisonment in the state prison.

10 13. Health and Safety Code section 11377 states in part:

11 (a) Except as authorized by law and as otherwise provided in subdivision (b)
12 or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
13 Division 2 of the Business and Professions Code, every person who possesses any
14 controlled substance which is (1) classified in Schedule III, IV, or V, and which is
15 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
16 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
17 (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
18 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of
19 Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
20 veterinarian, licensed to practice in this state, shall be punished by imprisonment
21 in a county jail for a period of not more than one year or in the state prison.

22

23 COST RECOVERY

24 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 DRUG

15 15. Cocaine is a Schedule II controlled substance as designated by Health and Safety
16 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code
17 section 4022.

18 FACTS

19 16. On or about March 28, 2011, at approximately 2:00 a.m., an officer from the Harbor
20 Police observed Respondent walk with an unsteady gait against a red light at the intersection of
21 North Harbor Drive and Rosecrans Street. Prior to reaching the opposite side of the street,

1 Respondent began to walk into the middle of North Harbor Drive at an angle. The officer
2 approached Respondent and observed a strong odor of alcohol emitting from Respondent's
3 breath. The officer also observed that Respondent had red and watery eyes and that her clothing
4 appeared disheveled. The officer asked Respondent where she came from and Respondent stated,
5 "I'm coming from the bar. I'm going to meet a friend at Denny's." As Respondent spoke, her
6 speech was slurred. The officer then made the determination that Respondent could not care for
7 her own safety and that she was in violation of the Penal Code for being drunk in public.

8 17. The officer asked Respondent if she had been arrested before, to which Respondent
9 replied that she had "a long time ago for DUI." When asked if she possessed anything illegal,
10 Respondent stated "no." The officer then searched Respondent and discovered in her right front
11 pocket a small Altoids tin. Inside the tin, the officer discovered a small plastic bag, similar to
12 those used to package and distribute illegal drugs. Inside the plastic bag, the officer discovered a
13 white powdery substance, which the officer recognized as cocaine. The substance tested positive
14 for cocaine. The officer also discovered in Respondent's jacket pocket, a small straw which had
15 been cut to approximately 2 inches. Respondent was arrested and transported to Las Colinas
16 Women's Facility.

17 18. On or about April 4, 2011, in the matter of *People of the State of California vs.*
18 *Jenny Lynn Smyth*, in San Diego County Superior Court case number CD233238, Respondent
19 was charged with violation of Health and Safety Code section 11350(a), unlawful possession of
20 cocaine, a felony. On or about April 25, 2011, Respondent pled guilty to violating Health and
21 Safety Code section 11377(a), possession of a controlled substance, per Penal Code section 17(b).
22 As a result of the plea, the court deferred entry of judgment for a period of 18 months and
23 Respondent was ordered to enroll in a drug treatment program pursuant to Penal Code section
24 1000. The court will withdraw the guilty plea and dismiss the charges if Respondent provides
25 proof of successful completion of the drug program on or before October 24, 2012.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Illegal Possession of a Controlled Substance)**

3 19. Respondent is subject to disciplinary action under section 2761, subdivision (a) and
4 section 2762, subdivision (a) of the Code for unprofessional conduct, in that on or about March
5 28, 2011, Respondent illegally possessed cocaine, as is set forth in paragraphs 16 through 18
6 above, which are incorporated herein by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Oneself)**

9 20. Respondent is subject to disciplinary action under section 2761, subdivision (a) and
10 section 2762, subdivision (b) of the Code for unprofessional conduct, in that on or about March
11 28, 2011, Respondent used alcohol to an extent or in a manner dangerous or injurious to herself or
12 the public, as is set forth in paragraphs 16 through 18 above, which are incorporated herein by
13 reference.

14 **PRAYER**

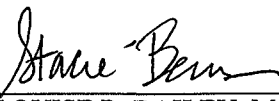
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 574688, issued to Jenny
18 L. Smyth;

19 2. Ordering Jenny L. Smyth to pay the Board of Registered Nursing the reasonable costs
20 of the investigation and enforcement of this case, pursuant to Business and Professions Code
21 section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: February 24, 2012


for LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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